IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1591 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NARAYAN S SHINDE

Versus

UNION OF INDIA & ORS.

Appearance:

MR GIRISH PATEL for Petitioner

MR JD AJMERA for Respondent No.1 to 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a Head Security Guard in Central Industrial Security Force (Ministry of Home Affairs), has filed this Special Civil Application before this Court in which challenge has been made to the order dated 25th October 1980 of respondent No.3, under which he was ordered to be dismissed from the services.

2. At the relevant time, i.e. when the petitioner was dismissed from the services, he was posted as Head Security Guard in the unit of Indian Oil Corporation, G.R., Baroda, which was under the control of respondent No.4. The Central Industrial Security Force has been constituted under the Parliamentary Act, viz. the Central Industrial Security Force (C.I.S.F.) Act , 1968. On the date of alleged negligence committed by the petitioner in discharging duties, he was on duty in L.P.G. plant as a Head Security Guard in the C.I.S.F. unit in Gujarat Refinery at Baroda. The petitioner has been chargesheeted that on 21st December 1979, one empty L.P.G. cylinder was attempted to be taken out from the Refinery in Truck No.RSB-969 at about 20:35 hrs., which has resulted in the act of negligence in performance of duties by the petitioner. The petitioner, because of negligence, could not prevent the pilferage of empty L.P.G. cylinder. In connection with the aforesaid incident, a criminal complaint was also lodged at the Police Station. In this criminal case, there were several accused including the petitioner. The petitioner was arrested in connection with the aforesaid criminal case and therefore placed under suspension under the order of respondent No.4 dated 29th February 1980. The chargesheet was served vide memo dated 1st March 1980 by respondent No.4. In the chargesheet, as many as two charges were framed against the petitioner. The departmental inquiry has been held against the petitioner on those charges. The Inquiry Officer, in his findings, found the petitioner guilty of charges levelled against him. The petitioner was given a show cause notice in which the penalty of dismissal was proposed. The petitioner submitted a reply to the show cause notice. After considering the reply to the show cause notice filed by the petitioner, the disciplinary authority, under its order dated 25th October 1980, dismissed the petitioner from the service. Against the order of dismissal, the petitioner preferred the appeal to the Inspector General, Central Industrial Security Force, New Delhi, a copy of appeal-memo of which has been filed as annexure `H' to this petition.

3. The petitioner has come up with the case in this Special Civil Application that the appeal filed by him has not been decided by the Appellate Authority. The writ petition has come up for admission before this Court and Rule was issued on 11th August 1981. The petitioner has also made a grievance in this Special Civil Application against the order of suspension. The petitioner has come up with the case that the suspension

of the petitioner has been ordered only because of pendency of criminal case against him. It was not suspension in contemplation of departmental inquiry or pending departmental inquiry. The petitioner has been acquitted in the criminal case by the Criminal Court on 17th October 1980. The petitioner prayed in the Special Civil Application for a declaration that he is entitled to the full salary during the period of suspension as his suspension, based on the criminal case merges in the order of acquittal.

4. On 11th August 1981, when the Rule was issued in this case, the learned counsel who put appearance on behalf of the respondents made a statement that a notice in regard to the treatment of suspension period will be issued and the question will be decided under the appropriate provision of law after affording to the petitioner an opportunity of being heard, within a period of one month from today. On this statement, this Court has granted liberty to the petitioner to move the Court if and when such an order is passed if it is adverse to the petitioner.

5. A reply to this Special Civil Application has been filed by the respondents. In the reply, the respondents have justified the dismissal of the petitioner from the service. So far as appeal which has been filed by the petitioner against the order of dismissal dated 25th October 1980 is concerned, the respondents replied that the said appeal has been decided by the Appellate Authority under its order dated 28th May 1981 and the same has been rejected. A copy of the order of Appellate Authority has also been submitted alongwith the reply. The petitioner, after that reply, amended the writ petition and the order of Appellate Authority has also been challenged and the prayer has been made for setting aside the said order.

6. Shri Girish Patel, learned counsel for the petitioner, made only submission that the penalty of dismissal which has been given to the petitioner in the present case is harsh and highly excessive to the guilt which is found proved against him. Carrying on further this contention, Shri Girish Patel, learned counsel for the petitioner submitted that the petitioner was acquitted in the criminal case. Secondly, the charge against the petitioner was only of negligence in performance of duties. There is no charge whatsoever against the petitioner that he was instrumental or he had some helping hand, for some extraneous consideration, in pilferage of one empty L.P.G. cylinder. The chargesheet

was only for the negligence and finding is also that the petitioner was negligent in performance of his duties. Shri Patel, learned counsel for the petitioner, further carried this submission contending that the petitioner has an unblemished past service record to his credit for last 10 years preceding the date of dismissal. The petitioner, during the period of his service, except the present incident in which he was chargesheeted, had not been served with adverse remarks or memo, which speaks for his sincerity, honesty and unshakeable faith in the force. Concluding the submissions, the learned counsel for the petitioner contended that the Appellate Authority has not considered the question of penalty to be given to the petitioner for proved misconduct in correct perspective.

7. On the other hand, the learned counsel for the respondents No.1 to 3, Shri J.D. Ajmera contended that it is a case of pilferage of one L.P.G. cylinder while the petitioner was performing his duties at the unit and as such, the penalty of dismissal which has been given to the petitioner is not harsh or disproportionate to the guilt proved. Shri Ajmera, learned counsel for the respondents lastly contended that in the matter of departmental inquiry after concluding thereof and charge was proved against the delinquent, what punishment should be given, is exclusively domain of the disciplinary authority or the Appellate Authority. But what will be the appropriate punishment for proved misconduct is not a matter where this Court has any wide powers of judicial review. The learned counsel for the respondents, Shri Ajmera, relying on the decision of Hon'ble Supreme Court in the case of State Bank of India v. Samendra Kishore, reported in JT 1994(1) SC 217, contended that in a matter of penalty to be given to the delinquent for proved misconduct, this Court, has no power of judicial review, sitting under Article 226 of the Constitution of India.

8. I have given my thoughtful consideration to the contentions made by the learned counsel for the parties. Shri J.D. Ajmera, learned counsel for the respondents has not disputed that the petitioner was given chargesheet only for negligence in performance of his duties. It is also not in dispute that during the last 10 years of service, the petitioner was not given any adverse remarks or memo whatsoever. The petitioner had unblemished service record, is also not a point in issue. The learned counsel for the respondents further agrees that in the criminal case, the petitioner was acquitted. The petitioner was not chargesheeted with the allegation that he had some connivance or helping hand, for

extraneous consideration, in pilferage of one empty L.P.G. cylinder. It is true that this Court sitting under Article 226 of the Constitution of India has a very limited power of judicial review in the matter of penalty to be given to a delinquent for proved misconduct by the disciplinary authority or by the Appellate Authority, as the case may be. In the case of State Bank of India v. Samendra Kishore (supra), though the Supreme Court has taken the view that this Court sitting under Article 226 of the Constitution of India has no power of judicial review in the matter of penalty to be given to a delinquent for proved misconduct, but in the later decision, the Supreme Court, in the case of B.C. Chaturvedi v. Union of India, reported in JT 1995(8) SC 65, held that where the penalty which has been given to the delinquent for proved misconduct is considered by this Court to be shocking to the judicious conscience of the Court, then this Court may go on itself on the question what appropriate penalty should be or the matter may be remitted to the Appellate Authority to consider whether the penalty of dismissal given to the delinquent, is appropriate or not.

9. In the present case, the charge against the petitioner was only of negligence and not the charge of connivance, collusion or of helping hand for extraneous consideration in pilferage of one empty L.P.G. cylinder from the unit of Gujarat Refinery. The past service record of the petitioner is admittedly unblemished. The charge of negligence has been proved but the penalty of dismissal which has been given to the petitioner on the charge of negligence certainly shocks the judicial conscience of this Court, more so when the petitioner has been acquitted in the criminal case of theft of one empty L.P.G. cylinder. In this case, the respondent No.4 has proceeded against the petitioner, both departmentally as well as by filing criminal complaint against him for theft of one L.P.G. cylinder. This Court cannot be oblivious of the fact that in the criminal case, the petitioner has been acquitted of the charge of theft. In disciplinary proceedings, the petitioner was not chargesheeted for theft or collusion or helping hand for extraneous consideration in pilferage of one L.P.G. cylinder. Both, criminal action as well as disciplinary action could have been taken by respondent No.4 for the alleged incident against the petitioner, but in criminal case, the petitioner has been acquitted. In disciplinary proceedings, the petitioner was only chargesheeted for negligence in performance of his duties and that charge has been proved. But the question that arise is whether in the facts and circumstances of this case as aforesaid,

penalty of dismissal is justified ? The Appellate Authority has gone into a question whether the penalty of dismissal is harsh or disproportionate of guilt of the petitioner proved. But while considering this aspect, the disciplinary authority has not called upon itself to give due consideration to the facts, at the cost of repetition, the acquittal of the petitioner in criminal case, the charge was only of negligence in disciplinary proceedings, the charge of negligence was only found proved, the petitioner has unblemished past service record and he was not chargesheeted in disciplinary proceedings for any collusion, connivance or helping hand for consideration in pilferage of one L.P.G. cylinder. Taking into consideration totality of the facts of this case, I am of opinion that the penalty of dismissal which has been given to the petitioner, is certainly disproportionate to the charges levelled and proved against him in disciplinary proceedings.

10. Now the next question that needs consideration is whether this Court can decide that with what penalty, the penalty of dismissal should be substituted. The Supreme Court, in the case of B.C. Chaturvedi v. Union of India, reported in JT 1995(8) SC 65, has pointed out that in such matters, normally the matter should be remitted to the Appellate Authority to go on this question and only in extreme cases, as illustrated, this Court should go on this question itself. I consider it appropriate, in the present case, to follow the first course and the matter has to be remitted to the Appellate Authority to decide what appropriate penalty should be given to the petitioner for proved negligence.

11. In the result, this Special Civil Application succeeds in part. The order of the Appellate Authority is set aside and the matter is remitted back to the Appellate Authority to consider what penalty other than dismissal should be given to the petitioner for proved charge of negligence against him. This matter is old one and as such, it is expected of the Appellate Authority to decide the matter within a period of four months from the date of receipt of certified copy of this order. The Appellate Authority shall also decide how the period of dismissal of the petitioner should be treated when it decides to substitute the penalty of dismissal with some other lesser penalty. Rule is made absolute in aforesaid terms with no order as to costs

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(sunil)